

179-6593

NEWMAN E. TALMADGE, GA.  
ABRAHAM RIBICOFF, CONN.  
HARRY F. BYRD, JR., VA.  
GAYLORD NELSON, WIS.  
MIKE GRAVEL, ALASKA  
LLOYD BENTSEN, TEX.  
WILLIAM D. HATHAWAY, MAINE  
FLOYD K. HACKELL, COLO.  
SPARK M. MATSUMAGA, HAWAII  
DANIEL PATRICK MOYNIHAN, N.Y.

CARL T. CURTIS, NEBR.  
CLIFFORD P. HANSEN, WYO.  
ROBERT J. DOLE, KANS.  
BOB PACKWOOD, OREG.  
WILLIAM V. ROY, JR., DEL.  
PAUL LAXALT, NEV.  
JOHN C. DANFORTH, MO.

# United States Senate

COMMITTEE ON FINANCE  
WASHINGTON, D.C. 20510

MICHAEL STERN, STAFF DIRECTOR  
GEORGE W. PRITTS, JR., MINORITY COUNSEL

EE #13-871

March 1, 1979

Admiral Stansfield Turner  
Director  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Admiral Turner: -

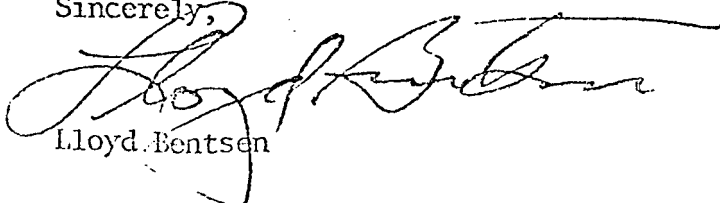
I know you are aware of my legislation to provide criminal penalties for the unauthorized disclosure by former CIA employees of the identities of acting intelligence officers.

I am extremely concerned about the dangers posed to the lives, effectiveness, and morale of our intelligence officers by these inexcusable and potentially deadly disclosures. I read one report that the names of American intelligence officers in Iran may have been disclosed. I know that this has happened before, in Australia and Greece.

I am writing to seek your assessment of the damage that has been, or might have been, caused in Iran and other areas of the world. I would appreciate any comments regarding the seriousness of this problem and the need for remedial action.

I believe that Congress should fully appreciate the dangers and implications of the kind of disclosures that concern me, and to this end I would welcome your views.

Sincerely,

  
Lloyd Bentsen

Approved For Release 2003/04/01 : CIA-RDP85-00988R000500020004-2

TAB A

Approved For Release 2003/04/01 : CIA-RDP85-00988R000500020004-2

Approved For Release 2003/04/01 : CIA-RDP85-00988R000500020004-2

TAB B

Approved For Release 2003/04/01 : CIA-RDP85-00988R000500020004-2

S. 191

Tab B

I. IN GENERAL:

STATED PURPOSE: "To protect the confidentiality of the identities of certain employees of the CIA."

REFERRED TO: Senate Judiciary Committee.

VEHICLE: Self-contained piece of legislation, viz., would not amend the National Security Act of 1947 or any U.S. Criminal Code provision (Title 18 U.S.C.).

II. CRIMINAL ACT:

SCOPE OF CRIMINAL OFFENSE LIMITED TO THOSE: who -- in the past or presently -- have been or are "in authorized possession or control" of identifying information.

TYPE OF INFORMATION THAT MUST BE DISCLOSED:

(a) information which identifies, or

(b) [information] which can lead to the identification of:

(1) any individual who is or was:

(i) an employee, or

(ii) agent, or

(iii) [otherwise] associated with the CIA.

(2) an entity associated with the CIA,

(c) and such information [(a) and (b) information] must have been "specifically designated by an Executive Order of the President as requiring a specific degree of protection."

CRIMINAL ACT REQUIRED TO COMPLETE THE OFFENSE: willful disclosure of such information.

DISCLOSURE TO WHOM: to any person not authorized to receive such information.

PENALTY: fine of not more than \$10,000 or imprisonment of not more than ten years, or both.

### III. OTHER PROVISIONS:

BARS TO PROSECUTION: No criminal prosecution shall be commenced for disclosure of otherwise protected information to:

- (a) the Intelligence Oversight Committees;
- (b) a Federal District Court Judge upon court order for purposes of any judicial proceeding; and
- (c) a Federal law enforcement officer upon court order after finding that disclosure is essential to the investigation of a possible crime.

DEFINITIONS: "authorized"

CONSPIRACY PROSECUTION: Barred; criminal prosecution limited to those described in Part II, above.

### IV. BRIEF ANALYSIS:

S. 191 would create a strict liability criminal offense. There is no need to show intent to injure or actual injury or threat of harm to the individual whose identity is disclosed or to the U.S.G. However, for a successful prosecution the prosecuting attorney would have to prove each element of the crime described under Part II, above. The scope of those subject to prosecution under the bill is sufficiently limited to those who are or have been in authorized possession or control of identifying information. Another approach that might be considered is to limit prosecution to "those, who as a result of employment with the U.S.G., have or have had access to or possession or control of" identifying information. The latter approach might preclude any defense based on non-authorized possession or control. It would appear, however, that Senator Bentsen's approach is satisfactory since he has written into the bill a rather broad definition of "authorized."

While, on first blush, S. 191 appears to make criminal the disclosure of the identity of overt -- such as OLC officers -- as well as covert CIA personnel, this infirmity is overcome by the fact that the bill requires the protected information to be classified.

Arguably, since the bill specifically requires disclosure to "any person not authorized to receive such information..." the specific "Bars to Prosecution" are not necessary. Should they be retained it would perhaps be wise to move for:

- (a) an in camera disclosure to the U.S. District Judge;
- (b) disclosure to the law enforcement personnel only upon a showing of appropriate security measures available as specified by the DCI; and,
- (c) a provision stating that in no case should disclosure under subsection (b) of the bill be construed as a positive grant of authority to disclose thereto.

Finally, while the bar to conspiratorial prosecution (Section 3) might be deemed necessary to protect members of the press from prosecutorial harassment, a provision providing for injunctive relief prior to publication may be desirable, although the latter might be considered constitutionally infirm. This infirmity could perhaps be overcome through careful drafting to limit the thrust of the injunctive relief.